

Bigger Stick, Better Compliance?
Testing Strength of Public Record Statutes on Agency Transparency in the United States

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Abstract

This study explores demographic, political, and statutory correlates of state agency compliance with public record laws by employing a transparency measure derived from a dataset of more than 7,000 public record requests submitted to state agencies in the United States through the nonprofit organization MuckRock from 2014 through 2017. Findings indicate that states with higher public records request compliance demonstrate less perceived corruption, are more politically liberal, higher in social capital, and include mandatory attorney fee-shifting provisions in their state laws. Regression analysis indicates the primary predictor of compliance is political culture, such that traditionalistic states, primarily in the South, demonstrate lower compliance with public record laws than moralistic or individualistic states. No relationships were found between compliance and other statutory provisions, including penalties. Also, no correlations were found between compliance and previous ratings of state laws and proactive posting of records online. Implications for future research, assumptions about the effects of public record laws, and priorities for good governance initiatives are discussed.

Keywords: Freedom of information, access to public records, government transparency

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Introduction

The ability for citizens to access government information is assumed essential for an informed electorate to self-govern, and that right is enshrined in the United States and more than 120 other nations through public record laws. Some experts and journalists, however, question whether public record laws make a difference, or even *inhibit* access to government information. They point to long delays, high fees, and low compliance by agencies (LaFleur, 2011; Prime & Russomanno, 2018; ProPublica, 2016; Wagner, 2017). Journalists often avoid submitting public record requests, anticipating delays long past their deadlines and a resulting stack of paper blotted out with black ink (Bluemink & Brush, 2005; Cuillier, 2011; Leopold, 2015). In the United States, at the federal level, a requester can expect receiving what was asked for only 1 out of 5 times (Bridis, 2018). As a result, the number of lawsuits filed against U.S. agencies for lack of compliance more than doubled from 2008 to 2018, with more than 1,200 cases pending (Mehta, 2018).

The lack of compliance makes some wonder if statutory provisions for access help or hurt transparency. Reporters in Eastern Europe, for example, found that newly adopted freedom of information laws led to more difficulty in acquiring records because government officials created new bureaucratic barriers and now had legal excuses at hand to deny access to information (Camaj, 2016). Columbia University legal scholar David Pozen argues that public record laws are reactionary and contribute to a culture of adversarialism, and in response, he recommends systematic changes toward affirmative disclosure, rather than reactionary disclosure (Pozen, 2017). Others also have suggested that it might be time to try another approach, such as proactive dissemination of information online without the need for public record requests (Stewart & Davis, 2016). “FOIA is irrevocably broken,” they write. “Redrafting FOIA in the digital age, for the digital age, is the only way to end the constant cycle of non-compliance, delay, frustration and inadequate legislative revision that has plagued the law since its initial passage.” (p. 536)

Perhaps scrapping current laws, introducing new proactive systems, and implementing new technological tools are worthy directions to pursue. But before ditching public record laws altogether, or enacting legislative overhauls, it might behoove policy makers to identify what elements of the laws produce better compliance and what statutory provisions don’t. Are specific day deadlines more effective than requiring “promptness”? Do more severe penalties in the law relate to better compliance? Do specific copy fee provisions result in lower monetary charges to requesters? Does the perceived strength of laws, as written, even matter?

This study takes a step at peeling back the layers of public record law effectiveness – to see if and how public record laws and their various permutations might influence, if at all, actual agency performance in responding to public record requests. This research contributes to our understanding of government transparency laws by tapping into the compliance results of thousands of actual state public records requests, submitted over four years by citizens, non-profit organizations, and journalists, throughout the United States. The results are compared to the various permutations of state public record laws to get a sense for what works best and what does not, and what might be changed, ultimately toward a more transparent and accountable government.

Literature Review

Access to public records empowers citizens to find out what their government is up to, an essential element of democratic theory (Blasi, 1977; Meiklejohn, 1961). While some states in the United States and some nations have enshrined this right in their constitutions, for the most part,

access rights rely on statutes and case law. U.S. journalists lobbied Congress for passage of the federal Freedom of Information Act in 1966 (Schudson, 2015), and since then all of the states have enacted their own public record laws, as well as more than 120 nations (Global Right to Information Rating, 2018).

A growing body of research suggests that freedom of information laws result in better government and better societies. The release of government records appears to result in cleaner drinking water (Bennear and Olmstead, 2008), greater confidence in the U.S. Social Security system (Cook, Jacobs, and Kim, 2010), increased levels of transparency and accountability (Worthy, 2010), and less corruption (Cucciniello, Porumbescu, & Grimmelikhuijsen, 2017; Lyrio, Lunkes, & Taliani, 2018). Public records are cited in 91 percent of stories submitted to the Investigative Reporters and Editors annual contest, and 70 percent of those stories result in substantive change or action (Lanosga & Martin, 2007). Indeed, for every dollar spent on records-based investigative reporting, society reaps about \$300 in benefits (Hamilton, 2016).

Research, however, suggests that implementation of transparency laws can vary by community and culture (Grimmelikhuijsen et al., 2013). One study in Florida found that the more gender and ethnic diversity in a community the more transparent its government through proactive posting of government data (Armstrong, 2008). On a global level, studies have found that culture and other factors are more important than laws for journalists to acquire information and operate freely (Bertoni, 2012; Lamble, 2004; Relly & Cuillier, 2010; Ricketson & Snell, 2002).

Indeed, public record laws can result in “perverse effects” through government agents engaging in strategic behavior to appear transparent but actually increase secrecy (Williamson & Eisen, 2016). Laws can amplify adversarial actions, increasing suspicion, antagonism and resentment between government employees and journalists (Worthy, 2010). Methods of bureaucratic resistance include changes in record keeping, manipulation of records, failure to create records, centralizing information control, and privatizing government services (Roberts, 2006).

Some scholars have attempted to measure the performance of public record laws in the United States, particularly at the federal level, usually comparing agencies and compliance over time (Prime & Russomanno, 2018; Wagner, 2017). Legal scholars have analyzed FOIA provisions, such as court or executive interpretations of the law (Kirtley, 2015; Pack, 2004). This is important, but does not allow us to test the effectiveness of different legal provisions, since these studies focus on one law, U.S. FOIA.

Other scholars have attempted to measure the transparency level of U.S. states and nations, ranking them from most transparent to least. This is typically done through four methods:

1. Legal Analysis

For years, Professor Bill Chamberlin led the systematic rating of different legal provisions in state laws for the Brechner Center for Freedom of Information at the University of Florida (Chamberlin et al., 2007; Citizen Access Project, 2008). In addition, legal scholars have compared state statutes and case law for various provisions, including access to government emails (Senat, 2014; Youm, 2014), penalties (Stewart, 2010; Marzen, 2017), copy fees (Lee, 2016), economic development records (Edmondson & Davis, 2011), and privatization of records (Bunker & Davis, 1998). Non-profit government accountability groups have attempted to rate the strength of legal provisions in state laws, as well (Better Governance Association, 2007).

At the global level, Toby Mendel helped develop a rubric to rate various provisions of national freedom of information laws – the gold standard today in public record law ratings. As

of 2019, the United States' FOIA law ranked 69th out of 123 nations, behind Russia, Rwanda, and Uganda, which highlights the limitations of equating strong laws with actual compliance. "Anecdotal evidence, along with some high-profile instances of whistle-blowing, notably the Edward Snowden disclosures, suggests that in practice the United States remains among the more open countries globally." (Mendel, 2016, p. 491) Just because a government has a strong law might not mean it follows the law.

2. Proactive Posting

The second method of evaluating agency transparency has been through measuring proactive dissemination of public records on government websites. Armstrong (2008) utilized this method to compare agency transparency with community demographic factors. Non-profit organizations, particularly those interested in government fiscal transparency, also have measured the amount of public records provided proactively on their websites (Follow the Money, 2018). The limitation of these studies is that they measure just one component of transparency – proactive posting of information online – which might not be related to compliance with public record laws. Just because an agency provides information online does not mean it will respond positively to requesters. The U.S. government, for example, posts millions of records online through agency websites and data portals, but agencies might be less able or willing to provide records requested through FOIA.

3. Qualitative Observation

A third approach to assess the level of transparency of agencies is through qualitative methods, such as in-person observation (Bush Kimball, 2003), interviews (Camaj, 2016), or surveys of experts and journalists. The Center for Public Integrity (2015), for example, combined a rating of state law provisions with a survey of experts in each state to develop a ranking of state transparency. State experts, however, might know their own state agencies' performances very well, but could have difficulty comparing to other states.

4. Field Experiments

The fourth method is the measuring of agency transparency through field experiments and audits. Since the 1990s, journalism and government transparency groups have conducted access audits in dozens of states, typically sending people out to a variety of agencies to request records, and then tracking and disseminating the results (National Freedom of Information Coalition, 2019). These audits have been helpful in illuminating widespread compliance problems, but because each audit covers just one state or community, carried out in different ways, the results cannot be compared across states.

Some scholars have conducted field experiments to identify factors related to better compliance. For example, one study in North Carolina found that peer pressure increases agency compliance with public records law (ben-Aaron et al., 2017). Other field experiments have found compliance to be related to strongly worded request letters (Cuillier, 2010), official letters instead of informal asks (Worthy, John, & Vannoni, 2016), and higher social clout (Lagunes & Pocasangre, 2017; Michener & Rodrigues, 2015). These experiments are useful for answering specific questions, and they are tightly controlled to account for confounding variables, but they usually do not cover enough jurisdictions that are regulated by different laws to compare public record law provisions. The other limitation of experiments is that while strong in internal validity, they lack external validity – the ability to mirror real life as it plays out agency to agency.

All of these studies demonstrate that the rich body of freedom of information research continues to grow and develop. Up until this point, however, the field has lacked large-scale datasets across jurisdictions to examine different legal structures. Strength of laws has been

measured, as well as proactive dissemination of records online by agencies. Experts have been surveyed, and people have their gut hunches of what works best, and what agencies are best. Everyone knows Florida has the best government transparency in the United States, right? Or does it? And everyone else is quick to blame their own states as being terribly secretive and backward. But beyond personal anecdotes and word of mouth, how do we really know? Do laws really make a difference?

This study attempts to test common public record law provisions against actual agency compliance. Because this study is exploratory, given the first application of this data, it will pose six research questions.

The first question is whether agency compliance to public records laws is related to existing measures of government transparency, such as rated strength of the law and the amount of records provided online. This will help determine whether proactive transparency or strength of law (or at least how it is currently measured) can predict actual compliance to the law.

R1: Is compliance with public record laws related to overall perceived strength of the law and proactive transparency?

The second question seeks to determine whether agency compliance with public record laws is related to the age of the law. Mendel (2016), in his rating of national laws, notes that nations that adopted FOIA laws earliest do not have laws as strong as those who have enacted legislation more recently. Those passing laws today can learn from the mistakes of the past. Three-quarters of the world's FOIA laws have been adopted since the year 2000. Some state public record laws were first enacted in the 1800s, although about half were created since the 1970s. Many underwent major revisions in the past 20 years. Does that mean compliance would be better for those crafted more recently?

R2: Is compliance with public record laws related to the age of a law – from when it was first enacted or overhauled?

Strength of penalties for noncompliance might encourage government officials to follow public record laws. Previous analysis of penalty provisions in state public record laws show that penalties vary widely, from nothing to jail time and heavy fines (Marzen, 2017; Stewart, 2010). Previous research in just one state – Arizona – indicated that request letters threatening litigation and punishment were more effective than friendly or neutral letters (Cuillier, 2010). That might not translate across the states. Even if a law includes heavy penalties for compliance, it might not be enforced, thereby reducing its effectiveness.

R3: Is compliance with public record laws related to the strength of penalties in state public record laws?

Attorney fee-shifting provisions in public record laws are similar to penalties. If a requester is denied information, he or she may file a lawsuit to compel the agency to provide the records. Some state public record laws allow judges to award attorney fees to a requester who prevails in court. These provisions vary widely in the states – some have no provision, some give judges discretion to award attorney fees, and some require judges to award fees. Agencies may be more likely to take requests more seriously if they could face paying out hundreds of thousands of dollars in attorney fees, or face public embarrassment from such a payout.

R4: Is compliance with public record laws related to the strength of attorney fee-shifting provisions in state public record laws?

Copy and search fees are common areas of complaints for requesters because they can dissuade a requester from acquiring records if they must pay hundreds or thousands of dollars. Some state laws allow just the actual materials of the copy to be charged, such as the cost of a

piece of paper and copy machine toner. Other states allow search time to be charged, or the time for an attorney to review for redactions. Perhaps the strength of fee provisions could be related to lower fees for requesters.

R5: Are copy fees charged to public record requesters related to fee provisions in state public record laws?

The last research question addresses timeliness and deadline provisions. State public record laws vary widely on their response requirements for agency officials. Some states have no deadline, but instead require a “prompt” request. Some states set a deadline of up to three business days, and many even more, up to the longest deadline of 30 days, under Maryland state law. The assumption by some is that a specific day deadline is best, rather than leaving it vague. Others say that when agencies have day deadlines they wait until the last minute to respond, which could mean a two-week delay in some states.

R6: Are response times to public record requests related to deadline provisions in state public record laws?

Methodology

To answer the research questions, this study employs a database of thousands of public records requests submitted by citizens, journalists, researchers, nonprofits and businesses to state agencies from 2014 through 2017 through MuckRock (www.muckrock.com). This nonprofit organization based in Boston, Massachusetts, is an online platform that has assisted requesters in filing more than 63,000 public record request letters since 2010. Users pay \$20 for assistance with four requests, or can pay more for additional service (\$40 per month for 20 requests or organizational accounts for \$100 per month). Staff members help draft request letters, identify the agency contacts and email, fax, mail or upload to agency portals the letters on behalf of the requesters. Agencies see the identity of the requester and of MuckRock. For states that require residency to submit a public records request, MuckRock sends the request from an in-state resident. Staff members follow-up on the requests and note the outcome in a database, which comprise the three main dependent variables for this study: 1) whether the agency provided the records (compliance), 2) how long the request took in days (timeliness), and 3) copy fees charged by the agency.

The advantage of this dataset is that it covers the entire United States, including Washington, D.C. Compliance outcomes can be calculated for each state and then those outcomes may be compared to the various differences in legal provisions among all 51 jurisdictions. The other advantage of this dataset is that it has high external validity because it represents actual public record requests from real people to a variety of public agencies. On the other hand, that also limits the study’s internal validity – a fair amount of “noise” from different types of records being requested will result in less precision in analysis. The benefit is the request procedure is the same across all requests through the mediated MuckRock online portal and staff.

MuckRock provided to the author a database of all requests it processed from its launch in 2010 to July 2018, totaling 50,433 requests at all levels of government – federal agencies, state agencies, cities and other local jurisdictions, throughout the United States. The requests in 2010 through 2013 were relatively few, during the early years of the startup’s endeavors, so they were removed. Also, requests submitted in 2018 were removed because they would have less time to be processed compared to earlier requests. Entries with incomplete data were removed, and because this study is focusing on state-level laws, 16,000 federal requests were removed.

Also, it was decided a priori to remove local jurisdictions for this exploratory study because of the wide differences in cities within states, which would create additional error, just as Armstrong (2008) found differences in transparency among communities in Florida. Massachusetts and Rhode Island were over-represented in the data, given the early focus of MuckRock in the Northeast U.S., so some records from those states were randomly removed to bring the request-per-capita number to the mean of the other states, at about 3 requests per 100,000 people. That left 7,125 requests submitted to state agencies throughout the country, from 24 in Rhode Island to 640 in New York, averaging 140 per state, all relatively distributed equally on a per-capita basis.

The nature of the requests and requesters over-represent those of individual requesters looking for records pertaining to their communities, for public-interest research, or a cause, according to discussions with MuckRock staff. About 40 percent of users of MuckRock are journalists, which is higher than typical requester composition, usually ranging from 2 to 14 percent depending on the agency (Frequent Filers 2006; Kwoka 2016; Silver 2016). Other users of MuckRock include citizen activists, and scholars. Commercial requesters are under-represented. An examination of the request types, from simple to complex, and agency types indicate a broad mix throughout the states, with the exception of Washington, D.C. Because the District of Columbia is structured similarly to a city, a high percentage of requests (58 percent) were directed to the police department, which is likely to result in a lower compliance rate compared to states, which on average, received about 10-15 percent of requests to state law enforcement agencies. Overall, the data were deemed suitable for exploratory study, to compare across states and identify potential correlates.

Outcome Variables

Compliance. This variable represents the percentage of MuckRock requests that each state agency completed during the four-year period, 2014-17. In all, 2,970 requests were noted by MuckRock as completed, out of the 7,125 requests (42 percent). That did not include requests that were partially completed (84), withdrawn (729), or in various stages of appeal. This study acknowledges that some denials by agencies could be warranted – not all information should be released just because it is requested. The measure gives a sense for the likelihood that a requester will receive documents when submitting a public records request, in comparison to other states. The compliance rate ranged from a low of 10 percent in Alabama to a high of 67 percent in Idaho and Washington state. A complete list by state is provided in Table 1, and a map as Figure 1, in the appendix.

Timeliness. This measure represented the number of days from when a request was submitted by MuckRock to when it was completed or closed. The average time nationally for finishing a request was 59 days.

Copy fees. This measure represented the average price charged per state for copy fees or search time. The average price nationally for copies, search time, or both, when charged, was \$67 (a few outliers in the millions were removed to avoid skewing the number). However, only 551 requests out of 7,125 (8 percent) encountered a copy fee, which reflects previous studies that indicate agencies recoup relatively little of the cost of administering public records laws (Wagner, 2017).

An Excel file was created with each row representing a state and the District of Columbia, or a total of 51 rows. The mean calculation for each of the three dependent variables was entered into the database for each state, along with the predictor variables.

Legal Predictor Variables

When possible, predictor variables were selected from the 2014-17 time range, within the frame of the MuckRock requests. No doubt some state laws changed during that time frame or after, injecting some additional error into the statistical analysis, but not enough to have a significant effect on findings.

Law strength. This measure of public records law strength was compiled from the Brechner Citizen Access Project ratings in 2008, just before the University of Florida project ended. Academics, led by Bill Chamberlin, rated various aspects of state public record laws on a 1-7 scale, providing an overall score for each state. While these ratings were completed before the records were requested by MuckRock, it is assumed that state laws do not change dramatically and that the overall nature of the law in 2008 would be reflected in performance in 2014-17.

Online transparency. The U.S. Public Interest Research Group (2018) measured the extent that each state posts spending data online proactively. States were graded A to F by assessing whether citizens could view online at the state websites spending for governor travel, Department of Corrections electricity, Department of Agriculture motor fuel, and other expenditures. The study also gathered other data for their assessment, including from surveys of state officials.

Perceived transparency. This measure of state transparency was created by the Center for Public Integrity (2015). Experts and journalists rated the effectiveness of agencies in their respective states regarding use of exemptions, access to officials' calendars, timeliness, appeal procedures, completeness of response, appeal process, punishment for offenders, and willingness for agencies to provide information in electronic format.

Penalties. This measure was created on a scale of 1 to 5, with "1" representing no penalties (4 states), "2" a misdemeanor and/or less than \$1,000 fine (12), "3" punishment set by court (20), "4" greater than \$1,000 fine (9), and "5" jail time (6). A second dichotomous variable used for analysis was created for simplicity, of either "1" equaling no penalty or misdemeanor (36 states) or "2" equaling jail time or a fine greater than \$1,000 (15). This scale was created by the author by reviewing statutes for all the states, as well as research by Marzen (2017), and the Reporters Committee for Freedom of the Press Open Government Guide (www.rcfp.org/ogg), updated in January 2019.

Attorney fee-shifting. This measure represents severity of fee-shifting provisions. A "1" represents that a judge "may" impose fees if the plaintiff prevailed or substantially prevailed (30 states). A "2" represents a mandatory legal provision that requires judges to impose attorney fees for the prevailing party (21). This scale was created by the author by analyzing each state's statute and case law. When questions arose, the author referred to the Reporters Committee guide and expert media law attorneys in their respective states.

Copy fees. This was measured by a three-point scale as either "1" for no fees outlined in law (14 states), "2" for reasonable fees (19), and "3" for fees specifically outlined (18), as per reading by the author of statute and case law.

Deadlines. This was measured by a three-point scale as "1" for no time deadline (17 states), "2" for 1-5 days (18), or "3" for 6-30 days (16). This was gathered by the author from statutes and case law.

Law age. This measured the age of each state's public records law, based on the year of the most recent major update.

Ombudsman. This variable identified whether a state had a formal ombudsman program to mediate public record disputes and aid requesters. Ombudsman programs vary widely and are

believed to provide some benefits for requesters (Stewart, 2009). A “1” indicated existence of an ombudsman program (39) and a “2” indicated no formal program (12).

Political Predictor Variables

Liberal ideology. This variable was operationalized as the percent of state residents who said they are liberal (Pew, 2017). Previous research has been mixed on whether liberal ideology is predictive of support for government transparency, particularly when controlling for education.

Libertarianism. This variable was represented by the percentage of voters in each state that voted for libertarian candidate Gary Johnson in the 2016 presidential election.

Political engagement. Some research indicates a connection between support for open records and civic engagement and political involvement (Cuillier, 2008). This was operationalized by a ranking of the states by political engagement, including the percentage of registered voters, voter turnout, political contributions, participation in civic groups, and a half dozen other measures (WalletHub, 2018).

Social capital. Similar to political engagement, social capital measures engagement in community, and could therefore be predictive of more robust government information sharing. This measure applied Putnam’s (1998) social capital rating for each state.

Perceptions of corruption. Government transparency scholars have found mixed results in connecting greater agency openness with lower corruption. This study will use a measure of perceived corruption, based on surveys of news reporters that cover state politics (Institute for Corruption Studies, 2018).

Traditionalistic political culture. This was operationalized as “1” for states with a traditionalistic political culture, as identified by Elazar (1966), and a “2” for states identified as moralistic or individualistic. Elazar defined traditionalistic cultures as more likely to view government as necessary to maintain the status quo, and those states that view political participation as a privilege reserved for those who meet the qualifications. Perhaps state agencies with such political cultures would be less forthcoming to provide records, particularly to citizens who would question authority.

Demographic Predictor Variables

Population. State population data collected from the U.S. Census FactFinder, July 1, 2018.

Education. The was operationalized by the average percentage of the population in each state with a bachelor’s degree or higher, according to the Census FactFinder in 2018.

Income. The average per-capita income in each state, according to the 2018 Census FactFinder.

Non-white. The percentage of citizens in each state that did not self-identify as white, according to the 2018 Census FactFinder.

Religiosity. This measure is based on an index of four questions asked of 35,000 U.S. adults regarding their religious beliefs (Pew, 2016).

Internet connectivity. Previous research indicates that those who use the internet for information-seeking tend to be more supportive of government transparency (Cuillier & Piotrowski, 2009). This study will test whether compliance is better in states with internet connectivity, as measured by the percentage of households with internet subscriptions (National Center for Education Statistics, 2016).

“Best” states. U.S. News & World Report (2019) combined 70 metrics to create a ranking of the “Best” states, using measures of health care, education, economy, infrastructure,

fiscal stability, crime, opportunity, and environment. States in the best shape might have more bandwidth and resources to support public records dissemination.

Structural pluralism. Armstrong (2008) noted that communities with varied, competing institutions tended to have governments more likely to proactively post information on their websites. It is possible records dissemination also could be related to structural pluralism. This was measured by averaging the z scores for education, income, non-agricultural occupations, the percentage of professional workers, non-white residents, population, and those not married (Cronbach's alpha = .72).

Southern region. States were coded by their U.S. Census designated division (nine altogether) to examine regional variation. Preliminary analysis indicated two regions standing out, so a "Southern" variable was created by "1" representing states in the East South Central division (Alabama, Kentucky, Mississippi, and Tennessee), and the West South Central division (Arkansas, Louisiana, Oklahoma, and Texas). All other states were coded as "2".

The variables for each state were entered into a database and analyzed in SPSS. Each record represented a state, including the District of Columbia, for a total of 51 records containing the variables of interest. Given the relatively small sample size, it is assumed results will be less likely to achieve statistical significance in correlational and means analyses, and certainly under multiple regression analysis. Any statistically significant findings will be considered strong and findings close to significance will be reported.

Results

Before addressing the six research questions, analyses were conducted to assess the nature of these three new measures, and to test their external validity. This was done through evaluation of variables associated with government transparency in previous research, and evaluation by experts. A ranked list of states with their compliance percentages (see Table 1 in the appendix), along with a heat map of the nation (Figure 1, in the appendix), were provided to experts for their review.

First, it was noted that the overall compliance rate among state agencies for the entire nation dropped steadily from 2014 through 2017, from 51 percent to 37 percent (Table 2 in the appendix). No discernible trend could be found in timeliness and copy fees. The three measures of agency responsiveness – compliance, timeliness, and fees – were not closely related to each other. A potential relationship was identified between compliance and timeliness ($r = .24, p = .09$), but not with copy fees charged ($r = .06, p = .70$). Copy fees, or the lack of fees, do not appear to be a reliable predictor of transparency, but timeliness may.

When looking at demographic correlates (see Table 3), some findings support previous research and the validity of the compliance measure. For example, states with a higher percentage of households that use the internet are more likely to be compliant with public record laws ($r = .46, p < .01$). Liberal ideology also was found correlated with better compliance ($r = .38, p < .01$), and religiosity negatively correlated ($r = -.50, p < .001$). Social capital also was related to compliance ($r = .35, p < .05$).

Population had no relationship to compliance – states big and small could be compliant or non-compliant. Some demographic variables, such as education, income and structural pluralism, did not reach statistical significance, but were close, and given the small sample (50 states and the District of Columbia), should not be ignored.

One of the most striking demographic variables was Southern region ($r = -.55, p < .011$). The central southern states (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma,

Tennessee, and Texas) averaged 28% compliance, compared to a 44% average for the other states, and nearly all ranked in the bottom half of the nation with the exception of Texas, which ranked 24th. This relationship held ($p = .07$), even when controlling for other factors in multiple regression analysis, including income, racial diversity, political ideology, and education. Indeed, in regression analysis, no factor remained related to compliance except the southern region variable (Table 4).

Turning to the research questions, the first query asked whether compliance with public record laws would be related to other measures of transparency, such as the perceived strength of the law or proactive transparency online. Correlational analysis found no relationships, except a possible connection between compliance and perceived transparency, as measured by surveys of access experts in the states ($r = .20, p = .16$), but the correlation is weak, at best.

The second research question asked whether agency compliance with public record laws is related to the age of the law, from when it was first enacted or overhauled. Again, no strong correlation was found between the law's age and compliance. If anything, the data indicate that states with older laws and less recent updates have stronger compliance ($r = .19, p = .18$).

The third research question asked whether penalty provisions would be related to better compliance, particularly states that allow for jail time and steep fines. No relationship was found ($r = -.04, p = .80$). It appears punishment outlined in the law has little effect on compliance.

The fourth research question asked whether the strength of attorney fee-shifting provisions in public record laws would be related to better compliance. A relatively strong positive and statistically significant correlation was found ($r = .30, p < .05$). States with no fee-shifting provisions or discretionary provisions averaged 39% compliance, compared to states with mandatory fee-shifting provisions, which averaged 45%.

The fifth research question asked whether copy fees charged to requesters would be related to fee provisions in state public record laws. Analysis found no relationship ($r = .08, p = .57$).

The last research question asked whether timely response to public records requests would be related to deadline provisions in the law. No correlation was found with the scale, but further analysis did yield an interesting finding. When calculating means for each of the categories, 1) No deadline, 2) 1-5 days, or 3) 6-30 days, it is apparent that the most effective legal provision is a requirement to respond within one to five days. That requirement resulted in a 51-day average response time, compared to 60 days for having no specific deadline and 63 days for having a deadline 6 to 30 days. While analysis of variance did not reveal statistically significant results $F(1, 49) = 1.64, p = .21$, the means differences suggest further study, particularly given the low number of records under analysis. No discernable relation was found between compliance and states with ombudsman offices.

Summary results were provided to a set of experts from throughout the United States to review, including 11 leaders of state freedom of information coalitions, 6 freedom of information scholars, and the co-founder of MuckRock. They were asked if the measure seemed to match reality, based on their experiences, as well as their impressions with the correlations. For the most part, the experts said the ratings made sense to them, with some caveats. Some thought the ratings were too high for their states, some too low. Some respondents questioned the validity of the measure because of the varied records requested throughout the states. While the measure's strength is in its external validity, some expressed hope in the ability of gathering data someday from a large nationwide controlled field experiment. Many were surprised that Florida did not rank higher than 31st, and some were surprised by the "Southern effect." A few thought it might

be caused by the fact many southern states have a residency requirement for requesters, even if MuckRock submits requests from in-state citizens. Indeed, a post-hoc analysis found a negative correlation between compliance and the six states with residency requirements ($r = -.35, p < .05$), including Alabama, Arkansas, and Kentucky. However, in regression modeling the Southern effect stays significant and the residency requirement correlation dissipates.

MuckRock co-founder Michael Morisy and others said they were pleased to see compliance correlate to less corruption. “It’s a claim we’ve been saying for a long time, but it was hard to always tell if it was accurate,” Morisy said. “The correlations were not surprising, but they were comforting.” Many thought penalty provisions should have been more strongly correlated with the compliance measure, but inferred that because penalties are rarely enforced, they are not taken seriously by agencies.

Discussion

This exploratory analysis compares the public records compliance of the 50 states and Washington, D.C., in relation to demographics, political variables, and specific legal provisions, providing several take-away points and opportunities for further investigation. At minimum, the results suggest that laws, or at least one provision of the laws, could indeed influence actual performance by agencies in complying with public record requests.

In general, the findings indicate a promising new method for measuring government transparency. The compliance measure was found to be correlated with variables typically associated with open government, such as perceived lower corruption, internet connectivity, liberal ideology, social capital, and well-developed infrastructure and community affluence (the “Best” states rating).

Interestingly, little correlation could be found between compliance and previous measures of government transparency, such as indices measuring the strength of laws or proactive dissemination of records online. It is likely that some legal provisions make more of a difference on compliance than others, and attempting to create ratings averaging large numbers of indicators results in little reflection of reality for the average records requester. Also, rating agencies on their proactive posting of records online might be helpful, but does not necessarily mean the agency will be forthcoming with records when asked. Ratings of states based on expert opinions have potential, as the findings indicate some support, although not statistically significant.

Further, the data indicate that few elements of public record laws seem to have a direct connection to how well they work for requesters. Penalty provisions seem to have little relation to compliance, perhaps because they are so rarely enforced (Stewart, 2010). If recalcitrant officials are never prosecuted or fined, then the law may not be taken seriously by agencies. Also, copy fee provisions do not appear to be related to actual fees charged, perhaps because fees are levied arbitrarily and rarely (Lee, 2016). States with ombudsman offices appear to have little better compliance than states without. Further, updated laws do not seem to impact compliance. If anything, the results suggested states with older laws enjoyed better compliance. Perhaps those updates were the result pushback against of a culture of secrecy that persists past any amendments.

The findings, however, indicate that at least one legal provision could be essential for compliance. In particular, analysis revealed a significant correlation between compliance and mandatory attorney fee-shifting provisions. States that allow judges broad discretion, or impose high burdens of success for litigating requesters, demonstrate worst compliance than states that

mandate judges to impose attorney fees. Certainly, agencies might not worry about a \$1,000 fine or other slap on the wrist, but it appears they pay attention to paying tens if not hundreds of thousands of dollars to a successful plaintiff's attorney, not to mention the bad publicity that would create for the agency. If there is one area for state freedom of information coalitions, journalism organizations and access advocates to focus their lobbying energy, it might be in enacting mandatory fee-shifting provisions in every state law. Similarly, the data indicate that the best deadline provisions might be 1-5 days. Anything longer and delays lengthen, and requirements of being "prompt" appear to result in similar long delays.

Finally, an unexpected finding indicates that southern states, not including Florida and others bordering the Atlantic, demonstrate some of the lowest compliance in the country, even when controlling for key demographic variables. This might suggest that compliance could be closely tied to political culture, regardless of the law. Perhaps demanding public records could be deemed impolite in some communities. As noted earlier, culture can be influential when it comes to freedom of information compliance (Bertoni, 2012; Grimmelikhuijsen et al. 2013; Lamble, 2004; Relly & Cuillier, 2010; Ricketson & Snell, 2002). More research is needed to delve into what could account for the significantly lower compliance in that region, and how to compensate for it.

Ultimately, much resources, time and energy in the U.S. advocacy community are focused on improving public record statutes, proactive dissemination, and litigation. While those are critical, this study suggests there is another area that is often missed: political culture. We learned from this study that political culture seems to matter, particularly if it is traditionalistic, as Elazar (1966) defines. The question is how to change or adapt to that culture, at least in a public records setting, to facilitate citizen access to government. Perhaps mandatory training for public employees could help, or the building of strong freedom of information coalitions in states to foster a culture of openness, or a largescale "Got Info?" public relations campaign.

Limitations

Comparing states is not a simple task, since every state cannot necessarily be labeled as "transparent" or "secretive." Unfortunately, the number of states is not large enough for powerful statistical analysis, but perhaps just large enough for basic exploratory studies such as this. The correlations were certainly higher than expected, despite the "noise" caused by lack of a controlled experiment.

The data are relatively new, and no doubt will be refined by MuckRock as the organization continues to expand and handle more and more requests. As noted earlier, these requests are over-represented by journalists and citizen activists, which no doubt affected the ratings. On the one hand, compliance could be higher because they are savvy requesters, and previous research indicates that journalists are treated better than average citizens (e.g., Darbshire & Carson, 2006). However, on the other hand, journalists and activists often pursue records that agencies don't want out, particularly those involving law enforcement, and that could decrease compliance. Despite that limitation, given the large number of requests over four years and that they were relatively consistent across states, the results were suitable for exploratory purposes.

Future research

Future studies should dig deeper into this rich data accumulated by MuckRock, which grows by 1,500 requests every month. For example, this analysis could be conducted at the city or county levels with a much larger dataset to investigate how state laws might influence compliance by municipalities. As years of data are collected, some studies can examine the

effects of amendments on compliance through longitudinal studies. This method could be replicated and refined elsewhere in the world, particularly with data tracked by Alaveteli, which has launched similar requester services in 25 countries, facilitating 315,000 requests (<https://alaveteli.org/>).

Further research also should focus on specific legal provisions and their effect on compliance, including experiments, surveys, and interviews. Not every part of a public records law is created equal, and identifying those elements that have the most impact on the requester, and therefore society, will help those who wish to improve them.

Conclusion

This study attempted to apply a new measure for freedom of information compliance, based on thousands of actual public record requests processed throughout the United States. While not a perfect measure, this MuckRock dataset indicates that public record laws, or at least parts of them, might have value after all. Despite the valid concerns raised by journalists and others about widespread agency noncompliance, certain legal elements in this reactionary system appear correlated with better service for requesters, particularly a specific short deadline (five days or less) and mandatory attorney fee-shifting provisions. This does not mean that other new ways of government information dissemination should be ignored, such as through proactive automatic online posting of government data and new incentives for disclosure. But it does suggest that nations and states wishing to improve transparency and accountability could do so by integrating tougher legal provisions and more open political cultures that make a difference.

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Table 1

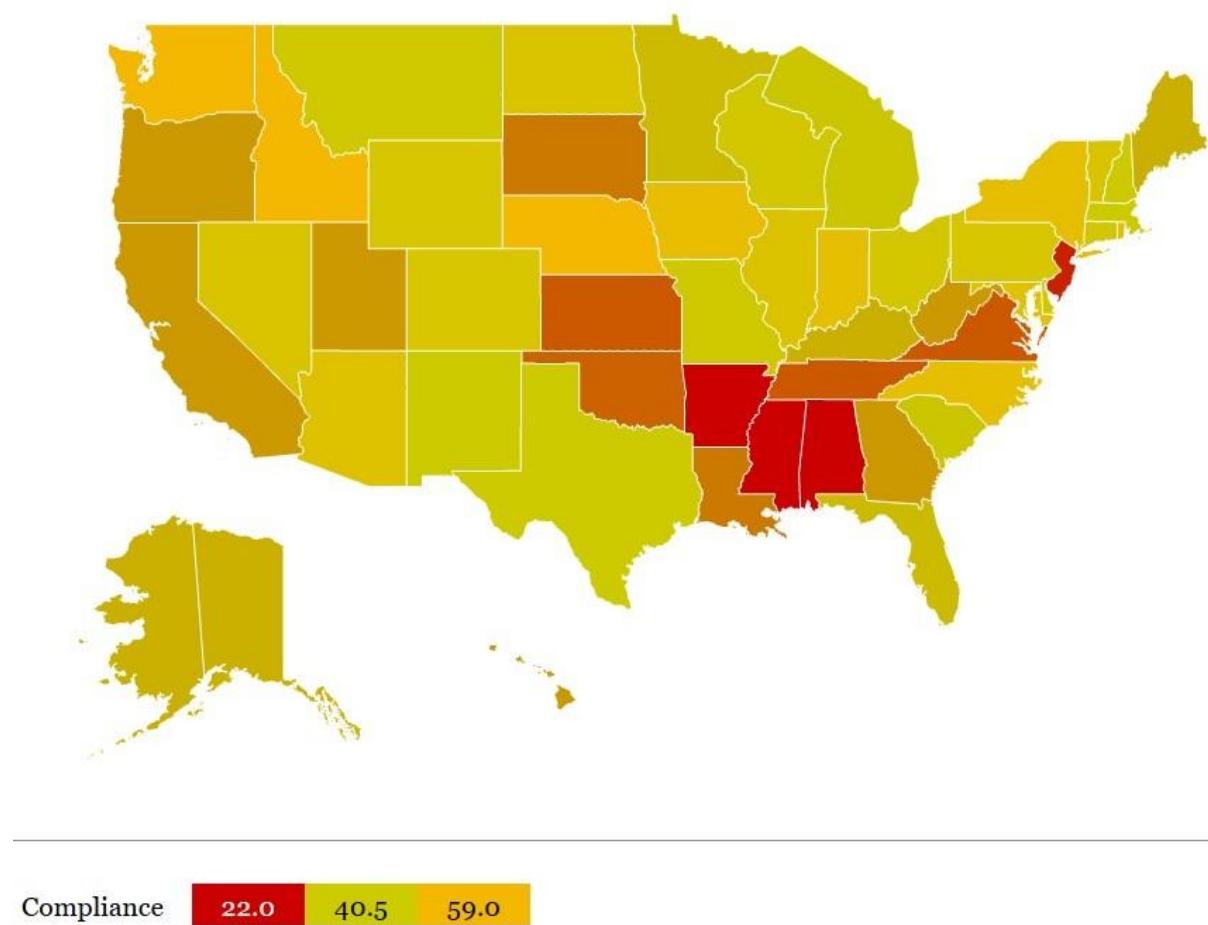
State Compliance Rates (in order from best compliance to least)

| Rank | State | N | Compliance (percent) | Avg Days | Avg Fee |
|------|----------------|-----|----------------------|----------|---------|
| 1 | Idaho | 75 | 67 | 15 | \$18 |
| 2 | Washington | 180 | 67 | 82 | \$2 |
| 3 | Nebraska | 75 | 59 | 27 | \$38 |
| 4 | Rhode Island | 24 | 54 | 8 | \$125 |
| 5 | Iowa | 93 | 54 | 48 | \$63 |
| 6 | New York | 640 | 52 | 79 | \$2 |
| 7 | Indiana | 116 | 52 | 49 | \$0 |
| 8 | North Carolina | 122 | 52 | 71 | \$6 |
| 9 | Maryland | 84 | 50 | 65 | \$184 |
| 10 | Arizona | 210 | 49 | 85 | \$3 |
| 11 | Illinois | 154 | 48 | 46 | \$0 |
| 12 | Nevada | 99 | 47 | 88 | \$412 |
| 13 | North Dakota | 127 | 47 | 32 | \$227 |
| 14 | Vermont | 127 | 47 | 33 | \$10 |
| 15 | Wyoming | 71 | 46 | 47 | \$12 |
| 16 | Pennsylvania | 168 | 46 | 44 | \$5 |
| 17 | Colorado | 167 | 46 | 62 | \$82 |
| 18 | Connecticut | 176 | 45 | 72 | \$2 |
| 19 | Ohio | 184 | 45 | 52 | \$0 |
| 20 | Delaware | 103 | 45 | 64 | \$11 |
| 21 | Wisconsin | 102 | 44 | 49 | \$8 |
| 22 | Missouri | 148 | 43 | 37 | \$58 |
| 23 | Montana | 109 | 43 | 39 | \$40 |
| 24 | New Hampshire | 90 | 42 | 36 | \$22 |
| 25 | Texas | 326 | 41 | 43 | \$222 |
| 26 | New Mexico | 105 | 41 | 79 | \$15 |
| 27 | Massachusetts | 120 | 41 | 40 | \$303 |
| 28 | Michigan | 136 | 40 | 34 | \$283 |
| 29 | South Carolina | 104 | 40 | 59 | \$56 |
| 30 | Minnesota | 94 | 39 | 77 | \$5 |
| 31 | Florida | 269 | 39 | 65 | \$238 |
| 32 | Kentucky | 89 | 38 | 45 | \$1 |
| 33 | Alaska | 76 | 38 | 74 | \$161 |

| | | | | | |
|----|---------------|-----|----|-----|-------|
| 34 | Maine | 74 | 38 | 39 | \$70 |
| 35 | Hawaii | 74 | 36 | 62 | \$188 |
| 36 | Utah | 96 | 36 | 84 | \$16 |
| 37 | California | 413 | 36 | 60 | \$35 |
| 38 | Oregon | 91 | 36 | 34 | \$31 |
| 39 | D.C. | 127 | 36 | 142 | \$4 |
| 40 | Georgia | 175 | 36 | 54 | \$188 |
| 41 | West Virginia | 87 | 36 | 39 | \$3 |
| 42 | South Dakota | 82 | 33 | 31 | \$56 |
| 43 | Louisiana | 113 | 33 | 92 | \$199 |
| 44 | Oklahoma | 129 | 31 | 103 | \$2 |
| 45 | Tennessee | 112 | 30 | 42 | \$3 |
| 46 | Kansas | 132 | 30 | 50 | \$32 |
| 47 | Virginia | 175 | 30 | 22 | \$25 |
| 48 | New Jersey | 172 | 25 | 66 | \$0 |
| 49 | Mississippi | 83 | 22 | 157 | \$12 |
| 50 | Arkansas | 98 | 16 | 24 | \$0 |
| 51 | Alabama | 129 | 10 | 76 | \$6 |

Figure 1

United States Map of Public Records Compliance



Range from 10% to 67%, with dark red indicating lowest compliance (primarily states with traditionalistic political cultures), and yellow highest compliance (states with moralistic and individualistic political cultures).

Table 2

National Trends in Compliance, Timeliness, and Copy Fees, 2014-2017

| | 2014 | 2015 | 2016 | 2017 |
|--------------|-------|-------|-------|-------|
| Requests (N) | 855 | 1,590 | 1,758 | 2,922 |
| Compliance | 50.9% | 43.8% | 42.7% | 37.3% |
| Avg Days | 64 | 76 | 60 | 47 |
| Avg Fee | \$20 | \$100 | \$69 | \$61 |

Table 3

Correlations for Compliance by Predictor Variables (N = 51)

| Predictor variables | Mean | SD | Correlation | Sig. |
|-------------------------------------|------|------|-------------|------|
| <i>Demographic variables</i> | | | | |
| Population | | | .00 | .98 |
| Education | | | .21 | .14 |
| Income | | | .23 | .10 |
| Non-white | | | -.23 | .10 |
| Religiosity | | | -.50*** | .000 |
| Internet connectivity | | | .46** | .001 |
| “Best” states | | | .39** | .005 |
| Structural pluralism (2) | | | .24 | .10 |
| Southern region | | | -.55*** | .000 |
| South | 28% | 10.8 | | |
| Other | 44% | 8.8 | | |
| <i>Political variables</i> | | | | |
| Liberal ideology | | | .38** | .007 |
| Libertarianism | | | .25 | .08 |
| Political engagement | | | .20 | .15 |
| Social capital | | | .35* | .02 |
| Corruption | | | -.34* | .02 |
| Traditionalistic culture | | | -.46** | .001 |
| <i>Legal variables</i> | | | | |
| Law Strength | | | .09 | .55 |
| Online Transparency | | | .13 | .36 |
| Perceived Transparency | | | .20 | .16 |
| Law age | | | .19 | .18 |
| Copy fees charged | | | .08 | .57 |
| Deadlines | | | .05 | .73 |
| Penalties | | | -.04 | .80 |
| None/misdemeanor | 41% | 11.4 | | |
| Fine or jail time | 41% | 9.4 | | |
| Attorney Fee-Shifting | | | .30* | .03 |
| Discretionary | 39% | 10.3 | | |
| Mandatory | 45% | 10.4 | | |
| Ombudsman | | | .14 | .33 |
| Yes | 44% | 8.0 | | |
| No | 40% | 11.4 | | |

* = $p < .05$; ** = $p < .01$; *** = $p < .001$

Table 4

Hierarchical OLS Regressions Predicting Compliance (N = 51)

| Variable | B | SE B | β |
|-------------------------------|-------|------|-------------------|
| Block 1: Demographic | | | |
| Population | .00 | .00 | .05 |
| Education | .08 | 1.01 | .03 |
| Income | -.25 | 3.66 | -.02 |
| Non-white | -.10 | .13 | -.13 |
| Religious | -.19 | .30 | -.19 |
| Southern region | 9.59 | 5.13 | .33 ($p = .07$) |
| Incremental R ² | 37% | | |
| Block 2: Political | | | |
| Liberal | .09 | .45 | .05 |
| Traditionalistic | -1.48 | 4.70 | -.06 |
| Incremental R ² | 37% | | |
| Block 3: Legal | | | |
| Penalties | .08 | .04 | .08 |
| Fee-shifting | 4.00 | 3.02 | .19 ($p = .19$) |
| Incremental R ² | 41% | | |
| Total R ² | 41% | | |
| Total Adjusted R ² | 26% | | |